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NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER 1984, TERM

THE ECCLESIASTICAL ORDER
OF THE ISM OF AM, INC., PETITIONER

V.

COMMISSIONER OF INTERNAL REVENUE

- APPENDIXES C AND D -

TO THE
PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOSEPH FALCONE

4000 Town Center
Suite 500
Southfield, MI 48075
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ATTORNEY FOR PETITIONER



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Internal Revenue Service
Department of Treasury
Washington, DC 28224

Person to Contact: Mr. Gillette
The Ecclesiastical Order of the
Ism of Am
30205 Longfellow
Madison Heights, Michigan 48017

Telephone Number: 202/566-4702
Refer Reply to: E:EO:T:R:1-2
Date: September 25, 1980

Attn: Rev. George N. Baustert

Dear Applicant:

We have considered your application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were formed as a non-profit ecclesiastical corporation under the laws of the State of Michigan on August 23, 1978. Your corporation is organized as a church. Your members hold a belief in AM as the true diety of the universe and that

AM, the Almighty Maker, is the "ultimate force that did make (create) the Ultimate Creation." The Doctrine of AM is that all humankind has the responsibility to intelligently determine what is right for them with recognition and respect for the rights of all humankind, to attain the true values of the "Ideal Life."

All ministers of the Ism of Am are ordained by the Home Office. After ordainment, the minister may apply for a Chartered Order which enables him to go out and establish an Ism of Am congregation. Each chartered order is then "granted the PRIVILEGE of using the Federal and State identification numbers and the TAX EXEMPT status of the Home Office." You instruct your ministers that all that is needed to start a congregation is the minister and two other persons over the age of 18.

At present, your organization consists of the Home Office and 26 chartered orders. These chartered orders consist mostly of family groups, although some do have officers that are not related. The religious service of the Ism of Am is communion of the Blood of Am and the Flesh of Am, which you call the "Next Supper." Your orders are instructed to conduct this activity as being the most obvious way of meeting the requirements of section 501(c)(3) of the Internal Revenue Code.

You stress the bookkeeping and business aspects of running an order and your literature emphasizes the tax advantages of being an exempt organization almost exclusively. Your organization "ordains" individuals as ministers for a fee of $25 and presents them with a certificate, instructions regarding the duties and constitutional rights of

religious bodies, a key ring, a personal copy of the Book of Am, and instructions on how to perform a civil wedding. Thereafter, for fees ranging from $50 - $75, a person may obtain an Ecclesiastical Charter, Certification as a Bishop and Canonization to Cardinal. The latter three carry with them further instructions regarding income tax laws and what the individual may do to avoid income tax liability. These items are never awarded free of charge or on a merit basis.

In addition, a cardinal may take instruction to become a Membership Counselor, at which time he can earn a "tax free income" for his order of $100 for each new member brought into the Ecclesiastical Order of the Ism of Am, and may grant order charters. All donations received from the new orders are to be shared with the Home Office. The present

"minimum donation" for new membership kits is $200 which, when received from the new member, is split 50/50 with the Home Office.

You advocate door to door canvassing, prospecting by telephone, conventional advertising and discussion with friends, neighbors and business associates at a "Membership Recruiting Social," at which time you acquaint these people with the benefits of being a minister of Am, as methods of finding new members. New members are required to sign an "I Am U thru U Am I" vow, renouncing any and all false gods, in order to prove, ostensibly to the Internal Revenue Service, that their beliefs are sincerely held. Further, Membership Counselors are told that they "must get" new members to go "all the way" and become bishops and cardinals themselves. Chartered Orders are instructed that they are not

authorized to answer any questions about the order to the Internal Revenue Service and that all inquiries are to be referred to the Home Office. You state that the Ism of Am is not a tax reform movement and you also state that: "We would be remiss in our duties if we did not provide for our ministers and members to participate in the FREE RIDE being given to the Pope, Billy Graham, Ms. Carter, ad infinitum." You admonish your members to: "Run your business with businesslike finesse, and you'll never be the business of the IRS."

Section 501(c)(3) of the Internal Revenue Code provides for the exemption of organizations organized and operated exclusively for religious, charitable, and certain other purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1 of the Income

Tax Regulations states that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Based on the information provided, it appears that you are not operated exclusively for one or more exempt purposes as specified in section 501(c)(3) of the Code. Your activities are neither religious nor educational as they are exclusively oriented toward instructing and encouraging individuals to illegitimately avoid income taxes by setting up superficial organizations in the guise of churches. Your primary activity is the sale of a service, a

method of obtaining exemption from Federal income taxes, in return for a fee, to members of the general public. Your sale of church charters as the attachments to your application indicate, are meant to be the sale of tax exemptions, for you advise potential charterees that they will be authorized to use your tax exempt status. In addition, your Articles of Association do not limit your purposes to those set forth in section 501(c)(3) of the Code nor do they include a provision providing for the distribution of your assets upon dissolution exclusively to organizations exempt under section 501(c)(3) of the Code. The copies of the Certificate of Amendment forwarded to this office do not evidence approval by the proper state authorities. For these reasons, we have concluded that you are not entitled to recognition of exemption under section

501(c)(3) of the Code.

We have also considered whether your organization qualifies as a "church" as the term is used in section 170(b)(1)(A)(i) of the Code.

Section 170(b)(1)(A)(i) of the Code provides for the deductibility of contributions to a "church or a convention or association of churches." Neither the Internal Revenue Code nor the underlying Income Tax Regulations defines the phrase "church or a convention or association of churches." Instead, the courts have defined the phrase. For instance, in the case of Chapman v. Commissioner, 48 T.C. 358 (1967), the Court pointed out that not every religious organization is a church and that congress did not intend that the term "church" be used in its generic or universal sense. The Court said the test as envisioned by Congress is whether an organization is engaged in carrying out

church functions. Therefore, what is a "church" for the purposes of the Code must be interpreted in light of the common understanding of the word.

From the information submitted, it appears that you have no distinct form of worship. Your orders engage in a Next Supper activity on occassion merely to comply with Internal Revenue Service requirements. You grant ordination, bishop, and cardinal certificates without the completion of any formal studies but merely for the receipt of a fee. You have not indicated any criteria for the qualification of practitioners of your religion, you do not have a Sunday school for the religious instruction of the young, nor do you require your members to renounce any former religious affiliations, but merely to renounce "false gods."

Based on your answers to our questions regarding church characteristics, we conclude that you are not a church as the term is intended by Congress in the context of the Internal Revenue Code because you do not possess sufficient characteristics of a church and do not perform the functions of a church.

Because you are not a church for the purposes of the Internal Revenue Code, its provisions concerning parsonages do not apply to you.

Section 508(a)(2) of the Code provides that an organization organized after October 9, 1969, shall not be treated as an organization described in section 501(c)(3) for any period before giving notice that it is applying for recognition of exempt status, if such notice is given after the time prescribed by regulation.

Section 1.508-1(a)(2)(i) of the

Income Tax Regulations provides that an organization seeking exemption under section 501(c)(3) of the Code must file the notice described in section 508(a) within 15 months from the end of the month in which the organization was organized, or before March 22, 1973, whichever comes later. Such notice is filed by submitting a properly completed and executed Form 1023, Application for Recognition of Exemption with the key District Director.

The records indicate that you filed for recognition of exemption from federal income tax under section 501(c)(3) on December 30, 1979, which is more than 15 months from the end of the month in which you were incorporated. As we have determined that you are not a church, even if you were to be recognized as exempt under section 501(c)(3), the provisions of section 508(a)(2) of the Code would apply

to you and exemption would only be recognized prospectively.

You are required to file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

Further, it should be noted that an Employer Identification Number is not a "tax exempt number" and is personal to the organization to which it is issued. In any event, a ruling covers only the specific organization applying for recognition of exemption and does not cover any of the subordinate organizations unless the group rulings procedures are followed. Your practice of informing your chartered orders that they may use your Employer Identification Number as a "tax exempt number" is erroneous and misrepresents the Service's practice in this matter. Each subordinate organization should apply for its own

Employer Identification Number and file its own tax returns.

You have a right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views with a full explanation of your reasoning. This statement, signed by one of your principal officers, must be submitted in duplicate within 21 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your principal officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this proposed

ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If we do not hear from you within 21 days, this action will become final, and copies hereof will be forwarded to the District Director, Detroit, Michigan. Thereafter, any questions about your federal income tax status or the filing of tax returns should be addressed to that

office.

Also, the appropriate state officials will be notified of this action in accordance with section 6104(c) of the Code.

Sincerely yours,

J.E. Griffith
Chief, Rulings Section 1
Exempt Organizations
Technical Branch

cc: DD, Detroit
Attn: EO Group
cc: State Officials
cc: E.F. Records

Internal Revenue Service
Department of the Treasury
Washington, D.C. 20224

Date: February 18, 1981

Employer Identification Number:
38-2257252
Form Number:

Tax Years:
1978 to present

The Ecclesiastical Order of the
Ism of Am
30205 Longfellow
Madison Heights, Michigan 48071

Person to contact:
Joseph Chasin
Contact Telephone Number:
202/566-3201

Dear Applicant:

This is a final adverse ruling as to your exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse ru_ng was made for the following reasons(s): You are not operated exclusively for religious or any exempt purpose described in section 501(c)(3) of the Code. You are not operated in such a manner that no part of

your net earnings will inure to the benefit of any individual. In addition, you are operated for private rather than public interests. We have also determined that if you were described in section 501(c)(3), you would be a private foundation because you are not a church within the meaning of section 170(b)(1)(A)(i), the only basis upon which you claim non-private foundation status. As we have determined that you are not a church, even if you were to be recognized as exempt under section 501(c)(3), the provisions of section 508(a)(2) would apply to you and exemption would only be recognized prospectively.

Contributions to your organization are not deductible under Code section 170.

You are required to file Federal income tax returns on the above form. Based on the financial information you

furnished, it appears that returns should be filed for the years shown above. These returns should be filed with your key District Director for exempt organization matters within 30 days from the date of this letter unless a request for an extension of time is granted. Processing of income tax returns and assessment of any taxes due will not be delayed because a petition for declaratory judgment has been filed under Code section 7428. Returns for subsequent tax years should be filed with the appropriate service center indicated in the instructions for those returns.

If you decide to contest this ruling under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Court of Claims, or the United States District Court for the District of Columbia must be filed within 90 days from

the date this ruling was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment.

In accordance with section 6104(c) of the Code, the appropriate State officials will be notified of this action.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Thank you for your cooperation.

Sincerely yours,

E. D. Coleman
Chief, Exempt Organizations
Technical Branch

§170(b)

(b) PERCENTAGE LIMITATIONS--

(1) INDIVIDUALS-- In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

(A) GENERAL RULE-- Any charitable contribution to--

(i) a church or a convention or association of churches,

26 USCS

§501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUST, ETC.

(a) EXEMPTION FROM TAXATION--An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503 ... (c) LIST OF EXEMPT ORGANIZATIONS--The following organizations are referred to in subsection (a): (3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of

the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

§508. SPECIAL RULES WITH RESPECT TO SECTION 501(c)(3) ORGANIZATIONS.

(a) NEW ORGANIZATIONS MUST NOTIFY SECRETARY THAT THEY ARE APPLYING FOR RECOGNITION OF SECTION 501(c)(3) STATUS.--Except as provided in subsection (c), an organization organized after October 9, 1969, shall not be treated as an organization described in section 501(c)(3)--

(1) unless it has given notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of such status, or

(2) for any period before the giving of such notice, if such notice is given after the time prescribed by the Secretary by regulations for giving notice under this subsection.

(b) PRESUMPTION THAT ORGANIZATIONS

ARE PRIVATE FOUNDATIONS--Except as provided in subsection (c), any organization (including an organization in existence on October 9, 1969) which is described in section 501(c)(3) and which does not notify the Secretary, at such time and in such manner as the Secretary may by regulations prescribe, that it is not a private foundation shall be presumed to be a private foundation.

(c) EXCEPTIONS--

(1) MANDATORY EXCEPTIONS--Subsections (a) and (b) shall not apply to--

(A) churches, their integrated auxiliaries, and conventions or associations of churches, or

(B) any organization which is not a private foundation (as defined in section 509(a)) and the gross receipts of which in each taxable year are normally not more than $5,000.

§509. PRIVATE FOUNDATION DEFINED.

(a) GENERAL RULE--For purposes of this title, the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than--

(1) an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii);

§7428. DECLARATORY JUDGMENTS RELATING TO STATUS AND CLASSIFICATION OF ORGANIZATIONS UNDER SECTION 501(c)(3), ETC.

(a) CREATION OF REMEDY--In a case of actual controversy involving--

(1) a determination by the Secretary--

(A) with respect to the initial qualification or continuing qualification of an organization as an organization described in section 501(c)(3) which is exempt from tax under section 501(a) or as an organization described in section 170(c)(2), ... (2) upon the filing of an appropriate pleading, the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia may make a declaration with respect to such initial qualification or continuing qualification

or with respect to such initial classification or continuing classification. Any such declaration shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Claims Court, as the case may be, and shall be reviewable as such. For purposes of this section, a determination with respect to a continuing qualification or continuing classification includes any revocation of or other change in a qualification or classificiation.

§554. Adjudications

(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved--

(1) a matter subject to a subsequent trial of the law and the facts de novo in a court;

(2) the selection or tenure of an employee, except a [an] administrative law judge appointed under section 3105 of this title [5 USCS§ 3105];

(3) proceedings in which decisions rest solely on inspections, tests, or elections;

(4) the conduct of military or foreign affairs functions;

(5) cases in which an agency is acting as an agent for a court; or

(6) the certification of worker representatives.

(b) Persons entitled to notice of an agency hearing shall be timely informed of--

(1) the time, place, and nature of the hearing;

(2) the legal authority and jurisdiction under which the hearing is to be held; and

(3) the matters of fact and law asserted.

When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(c) The agency shall give all interested

parties opportunity for--

(1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

(2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of this title [5 USCS §§ 556 AND 557].

(d) The employee who presides at the reception of evidence pursuant to section 556 of this title [5 USCS § 556] shall make the recommended decision or initial decision required by section 557 of this title [5 USCS § 557], unless he becomes unavailable to the agency. Except to the extent required for the disposition of ex parte matters as authorized by law, such an employee may not--

(1) consult a person or party on a

fact in issue, unless on notice and opportunity for all parties to participate; or

(2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title [5 USCS § 557], except as witness or counsel in public proceedings. This subsection does not apply--

(A) in determining applications for initial licenses;

(B) to proceedings involving the

validity or application of rates, facilities, or practices of public utilities or carriers; or

(C) to the agency or a member or members of the body comprising the agency.

(e) The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

(Sept. 6, 1966, P.L. 89-554, §1, 80 Stat. 384; Mar. 27, 1978, P.L. 95-251, §2(a)(1), 92 Stat. 183.)

§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision.

(a) This section applies, according to the provisions thereof, to hearings required by section 553 or 554 of this title to be conducted in accordance with this section. ... (e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be--

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title [5 USCS §§ 556 and 557] or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(Sept. 6, 1966, P.L. 89-554, §1, 80 Stat. 393.)

United States Tax Court Rule 210

Rule 210. General

(b) Definitions:

(11) "Administrative record" includes the request for determination, all documents submitted to the Internal Revenue Service by the applicant in respect of the request for determination, all protests and related papers submitted to the Internal Revenue Service, all written correspondence between the Internal Revenue Service and the applicant in respect of the request for determination or such protests, all pertinent returns filed with the Internal Revenue Service, and the notice of determination by the Commissioner. In addition--

United States Tax Court Rule 217

Rule 217. Disposition of Actions for Declaratory Judgment

(b) Procedure:

(1) Disposition on the Administrative Record: The Court expects that, within 30 days after service of the answer, the parties will file with the Court the entire administrative record (or so much thereof as either party may deem necessary for a complete disposition of the action for declaratory judgment), stipulated as to its genuineness. If, however, the parties are unable to file such a stipulated administrative record, then, not sooner than 30 days nor later than 45 days after service of the answer, the Commissioner shall file with the Court the entire administrative record, as defined in Rule 210(b)(11), appropriately certified as to its genuineness by the Commissioner or by an official authorized

to act for him in such situation. See Rule 212, as to the time and place for submission of the action to the Court. The Court will thereafter issue an opinion and declaratory judgment in the action. Except in a case involving a revocation or the status of a governmental obligation, the Court's decision will be based upon the assumption that the facts as represented in the administrative record as so stipulated or so certified are true and upon any additional facts as found by the Court if the Court deems that a trial is necessary. In the case of a revocation or a governmental obligation action, the Court may, upon the basis of the evidence presented, make findings of fact which differ from the administrative record. In the case of a governmental obligation action, see the last sentence of paragraph (a) of this Rule. See subparagraph (3) of this paragraph.

AMENDMENT I.

Freedom of religion, speech and press; peaceful assemblage; petition of grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT V.

Capital crimes; double jeopardy; self-incrimination; due process; just compensation for property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.